

**CITY OF LODI  
COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Consider Authorizing City Manager to Enter into Memorandum of Understanding between NCPA and the City of Lodi Regarding the Lease, Development and Cleanup of the Lodi Energy Center Site.

**MEETING DATE:** September 2, 2009

**PREPARED BY:** City Attorney's Office

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**RECOMMENDED ACTION:** Authorize City Manager to Enter into Memorandum of Understanding between NCPA and the City of Lodi Regarding the Lease, Development and Cleanup of the Lodi Energy Center Site.

**BACKGROUND INFORMATION:** Staff has reached tentative agreements with NCPA staff regarding the lease for the Lodi Energy Center (LEC), purchase of recycled water, giant garter snake mitigation and the cleanup of residue from sludge deposited on the Lodi Energy Center site. As referenced, the negotiations are tentative and must be approved by the City Council and the LEC membership. The major terms of various tentative agreements are summarized below:

- A) Lease:
- Rent: \$40,000 per year on top of existing STIG lease of \$20,310 annually.
  - 2.5% annual escalator.
  - Market Rate Adjustment every 10 years not to exceed +/- 25%.
  - Term: To 2043 with 50-year option.
  - City to relocate existing monitoring well at its expense.
- B) Water Supply:
- LEC to purchase 1,600 acre feet per year (AFN), "take or pay" at \$600/AF (\$960,000/year).
  - LEC option to purchase additional 200 AFN at \$750 AF (up to \$150,000/year).
  - LEC option to buy water above 1,800 AFN at \$900/AF (unlikely to occur).
  - One time connection charge of \$300,000.
  - 2.5% annual escalator.
  - Market adjustment every 10 years maximum +/- 25%.
- C. Giant Garter Snake Mitigation:
- City to dedicate 21 acres on northwest side of treatment plant and along Peripheral Canal alignment for Giant Garter Snake Habitat Remediation.
  - Price: \$24,000 per acre (Total \$504,000).
- D. Environmental Cleanup.
- The LEC site was historically used to store sewer sludge, primarily during periods that the sludge ponds needed maintenance. It is possible that this storage caused several

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**APPROVED:**

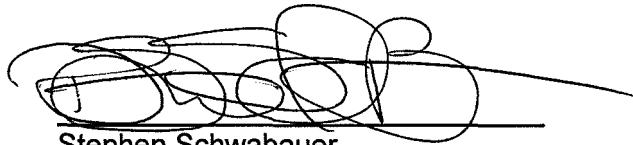
  
Blair King, City Manager

contaminants that have been found on site including metals, pesticides and combustion byproducts.

- NCPA and City staff have tentatively agreed to the following remediation program.
  - a) City to enter Voluntary Cleanup Agreement with Department of Toxic Substances Control (DTSC) and perform cleanup. City to pay consultant and DTSC costs currently estimated at \$100,000 to \$300,000.
  - b) LEC to excavate and load soil at its expense.
  - c) City to pay trucking and disposal costs currently estimated at \$320,000 to \$1.3 million.
  - d) LEC to front all cleanup costs as a credit against LEC's payment obligations to City.

**FISCAL IMPACT:** Up to \$1.6 million in costs in Year One offset by minimum revenue of \$1.8 million in Year One and minimum revenue of \$1 million in Year Two and following.

**FUNDING AVAILABLE:** Costs to be advanced by LEC as a credit against Year One and Two revenues.

A handwritten signature in black ink, appearing to read "Stephen Schwabauer", written over a horizontal line.

Stephen Schwabauer  
City Attorney

# Lodi Energy Center

An aerial rendering of the Lodi Energy Center. The facility includes several large industrial buildings, a tall smokestack, and a series of large circular storage tanks in the foreground. A speech bubble points to a specific building within the complex. The surrounding area is a mix of developed land and open fields.

Proposed  
Lodi Energy Center

Lodi City Council  
Sept. 2, 2009

# **Lodi Energy Center**

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- 1993 STIG Project ground lease
- 2008 informal negotiations – ground lease and water supply
- Negotiation direction provided January 2009 and April 2009

# **Lodi Energy Center**

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## **Land lease terms**

- \$20,310 current plus \$40,000 = \$60,310/year
- 2.5% annual escalator
- Market-rate adjustment every 10 years, not to exceed +/- 25%
- Length: To 2043 with 50-year option

# Lodi Energy Center

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## Water supply

- LEC to purchase 1,600 acre-feet per year at \$600/AF = \$960,000 annually (WID @ \$200/af)
- LEC option to purchase additional 200 af/year at \$750/af (up to \$150,000)
- LEC option to purchase above 1,800 af/year at \$900/af (no limit)
- One-time charge of \$300,000
- 2.5% annual escalator
- Market adjustment every 10 years (max. +/- 25%)

# **Lodi Energy Center**

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## **Environment**

### **Giant Garter Snake Mitigation**

- City to dedicate 21 acres for habitat
- LEC to pay City \$24,000 per acre (\$504,000)

## **Environmental cleanup**

# **Lodi Energy Center**

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## **Extra**

- Lodi to be “point of sale” for \$140 million power island purchase
- \$1,400,000 in City share of sales tax



# **Lodi Energy Center:**

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## **Financial benefits**

### **One-time**

- \$300,000 for water/wastewater division
- \$1.4 million sales tax revenue to General Fund
- \$504,000 for habitat mitigation

### **Ongoing**

- \$960,000 annually from commodity sale
- \$40,000 in additional lease payments

# DRAFT

## MEMORANDUM OF UNDERSTANDING BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND THE CITY OF LODI REGARDING THE LEASE, DEVELOPMENT AND CLEANUP OF THE LODI ENERGY CENTER PROPERTY

This Memorandum Of Understanding ("**Agreement**") respecting the site cleanup at the Lodi Energy Center Property and various related issues is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the Northern California Power Agency, a California joint powers agency ("**NCPA**") and the City of Lodi, a California municipality ("**Lodi**" or "**City**"). NCPA and Lodi collectively are referred to as "the **Parties**."

### RECITALS

A. NCPA has been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for use by its members; and

B. NCPA desires to own, construct and operate an additional gas turbine power plant (the "**Project**") immediately adjacent to CT2 and to the City of Lodi White Slough Water Pollution Control Facility ("**WPCF**") and on land owned by Lodi ("**Lodi Energy Center Property**"). This additional power plant will be referred to as the "Lodi Energy Center". NCPA is occupying the Lodi Energy Center Property pursuant to the terms of a lease by and between NCPA and Lodi dated February 17, 1999 ("**LEC Lease**"); and

C. In conducting various site assessments on the property as part of the licensing process, NCPA identified elevated levels of Hazardous Substances in and about the Lodi Energy Center Property; and

D. Lodi has entered into a Voluntary Cleanup Agreement with the California Department of Toxic Substances Control to cleanup the contamination on the Lodi Energy Center Property; and

E. NCPA and Lodi have met several times from May through July 2009 to discuss various issues relating to the Lodi Energy Center Property, including without limitation the cost, scope and method of cleanup, dewatering requirements, Endangered Species Act issues, access issues and various issues related to the LEC Lease; and

F. NCPA and Lodi desire to address each of these issues and ultimately amend the appropriate documents to reflect the agreements in this Memorandum of Understanding.

**NOW, THEREFORE**, for mutual consideration, the amount and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound agree as follows:

1. Incorporation of Recitals. The above Recitals are incorporated in this Agreement.

2. Definitions. In addition to the defined terms identified throughout this Agreement, the following terms shall have the meaning as described below:

A. "Environmental Laws" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Wat. Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health and Safety Code, Section 25300 et seq.).

B. Hazardous Substances. "Hazardous Substances" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous substances" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or

by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

3. LEC Lease.

A. The Parties have discussed various amendments to the LEC Lease and in April, 2009 agreed to various terms. The previously agreed upon terms are listed in Exhibit A attached hereto and it is the Parties' intention the LEC Lease be amended to include those terms as well as the terms listed in this Section 3.

B. Additional Land for the Lodi Energy Center. The Parties agree to amend the LEC lease to include an easement of roughly 26 feet of additional land located adjacent to the current Lodi Energy Center Property on the east/northeast side of the property. This property is more particularly described in the legal description attached hereto as Exhibit "B" and is shown on the maps attached hereto as Exhibit "C". The consideration for the easement will be \$1.00 per year to be paid in addition to the rent for the Lodi Energy Center Property as stated in the LEC Lease and will be due and payable concurrently with the rent in the LEC Lease.

C. Retained Easements. Lodi leased the Lodi Energy Center Property to NCPA without retaining any rights for various easements that transverse the Lodi Energy Center Property. The Parties desire to amend the LEC Lease to acknowledge and provide for these easements, and the duties, rights and obligations associated therewith including without limitation, a pipeline that currently runs underneath the Lodi Energy Center Property and a 13.8KV Supply from CT-2 to City of Lodi White Slough Facility. NCPA will be responsible at its sole cost for relocation of any utilities, pipelines, or other apparatus associated with or located in these retained easements as necessary for the construction or operation of the Lodi Energy Center with the exception of the test well located on the south east corner of the Property and any other items or utilities specifically identified in this Agreement.

4. Temporary Lay Down Areas/Access Areas. The construction of the Lodi Energy Center will require installation of large pieces of equipment that will utilize nearly all available land on the Lodi Energy Center Property as well as two additional areas. NCPA needs additional space outside of the Lodi Energy Center Property to store equipment and supplies ("**Lay Down Area**"). The Parties have identified space to near the Lodi Energy Center property, which is identified on the map attached hereto as Exhibit "D". Lodi will maintain the responsibility for any hazardous materials that predated NCPA's use of the laydown areas. The Parties desire to enter into an easement agreement whereby Lodi will grant a temporary easement to the Lay Down Area and other access areas for use during construction of the Lodi Energy Center. NCPA will indemnify Lodi for any injuries to Lodi and NCPA employees, contractors, agents or invitees that may occur on the temporary easement or access areas, to the extent that they are not caused by the negligence or willful misconduct of Lodi.

5. Lodi Energy Center Property Cleanup. The Parties recognize that timely cleanup of the Lodi Energy Center Property is imperative to meeting the construction deadlines for the new power plant.

A. Voluntary Cleanup Agreement. To that end, Lodi agrees to conduct any necessary site investigation, removal action or remediation in accordance with the schedule attached hereto as Exhibit "E". Lodi further agrees to comply with the California Department of Toxic Substances Control requirements under the Voluntary Cleanup Agreement that has or will be executed with the California Department of Toxic Substances Control for the cleanup of Hazardous Substances.

B. NCPA to Conduct Excavation on Lodi Energy Center Property. On behalf of Lodi, NCPA will conduct any necessary excavation of soil containing Hazardous Substances on the Lodi Energy Center Property provided that: i) such excavation can occur concurrently with NCPA's preparation of the Lodi Energy Center Property for construction of the power plant (i.e. NCPA will not have to mobilize excavation contractors twice); ii) NCPA will choose the excavation contractors and will enter into the necessary contracts for soil excavation; iii) Lodi pays for the costs of soil sampling in preparation for disposal; iv) Lodi pays for the transportation and disposal costs for any soils that need to be disposed of off-site at a licensed facility, or if the soil will be encapsulated, Lodi will pay for the transportation, siting, compaction, encapsulation and operations and maintenance of the cap; v) Lodi chooses the disposal facility and signs all manifests for soil and, if necessary, groundwater disposal; vi) if soil is encapsulated, Lodi will enter into a Land Use Covenant with the Department of Toxic Substance Control ("**DTSC**"); and vii) NCPA does not admit any liability or fault for the contamination on the Lodi Energy Center Property.

C. Advance of Cleanup Funds. NCPA will advance the funds necessary to cleanup of the Property including but not limited to, oversight fees, regulatory costs, consultant costs, and excavation, transportation and disposal costs. NCPA may, in its sole discretion, credit these advanced costs against its financial obligations to the City contemplated in this Agreement with interest at [Bank of America Prime Rate not to Exceed 6%].

D. Lodi to Accept Dewatering Water. In exchange for NCPA's excavation of soil containing hazardous substances, and subject to the City's ability to take the water under the terms of its discharge permit. NCPA may dispose of all water collected on the Lodi Energy Center Property during the construction of the Lodi Energy Center into Lodi's WPCF at no costs to NCPA.

E. Review of Documents. Lodi will provide drafts of all technical workplans or reports to NCPA for NCPA's review and comment at least one (1) business day prior to submitting any such workplan or report to DTSC. And Lodi further agrees that it will not unreasonably refuse to incorporate NCPA's comments into the final workplan or report before submission to DTSC.

F. Compliance with Laws. Lodi agrees to comply with all federal, state and local laws and ordinances in conducting any site investigation, removal work, remediation, or disposal of hazardous substance on or from the Lodi Energy Center Property; including the requirements that all engineering and geological interpretations, conclusions and recommendations are developed in accordance with applicable state law, including, but not limited to, Business and Professions Code sections 6735 and 7835.

6. Water Supply. In April, 2009, Lodi and NCPA agreed to various terms for Lodi to supply water to NCPA. The Parties desire to revise the Water Supply Agreement to include the following terms:

A. Title 22 Water Supply.

i. Lodi will supply NCPA 1600 acre feet per year ("**afy**") under a take or pay agreement whereby NCPA pays for the base amount of water even if it does not use the full allotment.

ii. NCPA may increase its usage from 1600 to 1800 afy at the 1.25 times the Price for Water (defined below).

iii. NCPA will make a onetime payment of Three Hundred Thousand Dollars (\$300,000.00 US) within thirty (30) days after the Lodi Energy Center project completes financing.

iv. The initial price for the water will be \$600 per afy ("**Price for Water**").

v. The Price for Water will increase at a rate of 2.5 percent per year on the anniversary of the date that water is first supplied under the Water Supply Agreement.

vi. On the ten year anniversary date of the Water Supply Agreement, either Lodi or NCPA may initiate a review of the then existing Price for Water based on then existing market circumstances for water used in an industrial capacity such as a power plant. Such review will be conducted by a mutually acceptable objective third party. Any supported adjustment to the then existing Price for Water shall not exceed +/- 25% of the then existing Price for Water.

vii. NCPA will pay for water above the 1800 afy at 1 ½ times the Price for Water.

viii. The Parties will mutually agree upon the date upon which the Lodi's obligation to supply water will commence under the Water Supply Agreement.

B. Will Serve Letter. Lodi issued a "Will Serve Letter" on July 24, 2009, to NCPA recognizing the Parties would be negotiating an increased water allotment provided in this Agreement. A copy of that "Will Serve Letter" is attached hereto as Exhibit F.

7. Stormwater. Subject to Lodi's ability to take the stormwater under the terms of its discharge permit, Lodi will accept storm water runoff from the Lodi Energy Center Project under the "Will Serve Letter" dated October 17, 2008, attached hereto as Exhibit G.

8. California Giant Garter Snake Mitigation Land. The ditch located adjacent to the southern boundary of the Lodi Energy Center is listed as habitat for the California Giant Garter Snake ("**Snake**"). The property located within 200 feet of the creek serves as a buffer from the creek and its use is likewise designated as habitat and its use is restricted to protect the Snake. The San Joaquin County Council of Governments, who manages the Snake's Habitat Conservation Plan, requires a three-to-one mitigation ratio for any destruction or use of habitat. Therefore, to mitigate for the 200 foot buffer, NCPA may desire to purchase a conservation easement from the City of Lodi which may actually provide better habitat than the buffer (upland) habitat for the Snake. Lodi will then dedicate the conservation easement to SJCOG on the land identified in Exhibit H hereto, comprised of 21 acres. NCPA will pay Lodi Twenty Four Thousand Dollars (\$24,000.00 US) per acre for the approximately 21 acres for a total not to exceed Four Hundred and Eighty Thousand Dollars (\$504,000.00 US) for the conservation easement. The Parties will draft the proper documentation to facilitate the conservation easement. NCPA will pay for the costs, except for Lodi's internal costs, associated with drafting and implementing the conservation easement.

9. Amendment of Other Agreements. The Parties agree to enter into or amend any other agreements or apply for any necessary permits or approvals to facilitate compliance with the terms of this Agreement or as necessary for construction or operation of the Lodi Energy Center.

10. Interconnect Agreement. The Parties negotiated an Interconnect Agreement for NCPA to provide power to Lodi, but the Interconnect Agreement has not been properly executed. The Parties desire to finalize and execute the Interconnect Agreement by the end of 2009.

11. Miscellaneous Provisions.

A. Modifications. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing and signed by the Parties, except

that the Parties may modify the schedule in Exhibit E by mutual agreement of the Parties' project managers.

B. Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

C. Events Beyond Control of the Parties. Any delay or default in the performance of any obligation of Parties under this Agreement resulting from any cause(s) beyond the Parties' reasonable control shall not be deemed a breach of this Agreement.

D. Notice. Any written notice, report, or other communication required or permitted to be given under this Agreement shall be deemed sufficiently given (i) when delivered personally; (ii) or three days after deposit in the United States mail with first-class postage affixed; (iii) or one day after it is sent by established courier, addressed to the parties as follows; or (iv) upon sending of a facsimile with confirmation of receipt, sent to the following telephone numbers; or (v) when sent by electronic transmission with confirmation of receipt or, if no confirmation of receipt is possible, by promptly sending a duplicate copy by first-class mail, certified mail or overnight delivery in which case it will be deemed delivered as provided in this section:

"NCPA

NCPA  
Attn: Ed Warner  
651 Commerce Drive  
Roseville, CA 95678  
Facsimile: (916)783-7693  
E-mail: ed.warner@ncpagen.com

"With a copy to"

MEYERS NAVE RIBACK SILVER & WILSON  
Attn: Michael F. Dean, General Counsel  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814  
Facsimile: (916) 556-1516  
E-mail: mdean@meyersnave.com

"Lodi" ERM

City of Lodi  
Attn: Blair King  
221 W. Pine Street  
Lodi, CA 95240  
Facsimile: (209) 333-6807  
E-mail:



“With a copy to”

City of Lodi  
Attn: D. Stephen Schwabauer  
221 W. Pine Street  
Lodi, CA 95240  
Facsimile: (209) 333-6807  
E-mail: sschwabauer@lodi.gov

E. Construction. This Agreement shall not be construed more strictly against one party than against any other party but shall be construed as if all Parties prepared this Agreement.

F. Authority. Each person executing this Agreement on behalf of NCPA and Lodi represents and warrants that the execution of this Agreement has been duly authorized by their respective governing bodies and that such person is authorized to execute this Agreement.

G. Counterparts. The Parties may execute this Agreement in two (2) or more counterparts which shall, in the aggregate, be signed by all the Parties; each counterpart shall be deemed an original instrument as against any party who signed it.

H. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

I. Time is of the Essence. Time is expressly declared to be at the essence in performance of this Agreement.

J. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

L. Assignment. Neither party may, without the other party's prior written consent, assign its rights or delegate its duties under this Agreement. This provision does not apply to Lodi's contracting with environmental consultants or contractors to perform the cleanup of the Lodi Energy Center Property.

M. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties. And no third party or parties shall have any right of action under this Agreement for any cause whatsoever.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date written below:

NORTHERN CALIFORNIA  
POWER AGENCY

By: \_\_\_\_\_

James H. Pope  
Its: General Manager

Date: \_\_\_\_\_

ATTEST

APPROVED AS TO FORM

By: \_\_\_\_\_

Denise Dow  
Assistant Secretary

By: \_\_\_\_\_

Michael F. Dean  
General Counsel

CITY OF LODI

By: \_\_\_\_\_

Blair King  
City Manager

Date: \_\_\_\_\_

ATTEST

APPROVED AS TO FORM

By: \_\_\_\_\_

Randi John, J.D.  
City Clerk

By: \_\_\_\_\_

D. Stephen Schwabauer  
City Attorney

### Exhibit List

- A. LEC Lease Terms
- B. Lodi Energy Center Property Legal Description
- C. Maps showing Easement
- D. Lay Down Area Map
- E. Cleanup Schedule
- F. Will Serve Letter dated July 24, 2009
- G. Will Serve Letter dated October 17, 2009
- H. California Giant Garter Snake Mitigation Land

## Exhibit A

### LEC Lease Terms

- \$40,000 per year initial lease rate for LEC Unit (on top of \$20,000 annual existing STIG lease)
- Lease commences after issuance of CEC AFC and Project Participants execute Phase 3 agreements and/or Power Purchase Agreements supporting Project construction
- Lease rate escalates at 2.5 percent per year each July 1 after lease commences
- On the ten year anniversary date of the current lease, either Tenant or Landlord may initiate a review of the then existing lease rate based on then existing market circumstances, with such reviewed to be conducted by a mutual acceptable objective third party. Tenant and Landlord will equally share the cost of any mutually approved market review. Any supported adjustment to the then existing lease rate shall not exceed +/- 25% of the then existing lease rate.
- Term: Coincides with existing NCPA CT2 lease; from Project commencement through December 31, 2043, with a 50 year renewal right by tenant.
- Effectuate revised lease conditions applicable to the LEC by way of revisions to Paragraphs 4(a) and 4(b) of existing lease (likely by letter agreement); such revisions to be approved by the Lodi City Council and the NCPA Commission.
- Lease boundary to be determined by the lease map not the legal description
- City of Lodi to relocate, at its expense, the monitoring well located at the south east corner of the property
- The terms and conditions of the STIG lease, as pertaining to the STIG, to remain unchanged

## **EXHIBIT A**

### **Lease Area**

All that real property situated in the Southwest one-quarter of Section **24**, Township **3** North, Range **5** East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in **Book 1023** Page **463** Official Records filed at the Office of the Recorder of San Joaquin County, **more** particularly described as follows:

BEGINNING AT A POINT on the South line of said Section **24** from which the Southwest corner of said Section **24** bears North **89°20'43"** West **838.23** feet. Thence from said Point of Beginning North **89°20'43"** West **682.86** feet along said South line, thence leaving said South line along the East boundary of an easement granted to Pacific Gas & Electric Company described in that Deed dated September **6, 1957** recorded in **Book 2013** of Official Records at Page **426**, San Joaquin County Records, North **23°58'00"** West **549.85** feet to a point measuring **20.00** feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds, thence parallel with and **20.00** feet distant from the centerline of said levee North **69°15'09"** East **672.51** feet, thence South **20°19'55"** East **798.18** feet to the Point of Beginning.

Containing **10.1** Acres (**439,050** Sq. Ft.)

This legal description is based on record bearings and distances shown on the Record of Survey filed at **Book 32** Page **175** with San Joaquin County Recorder's Office.

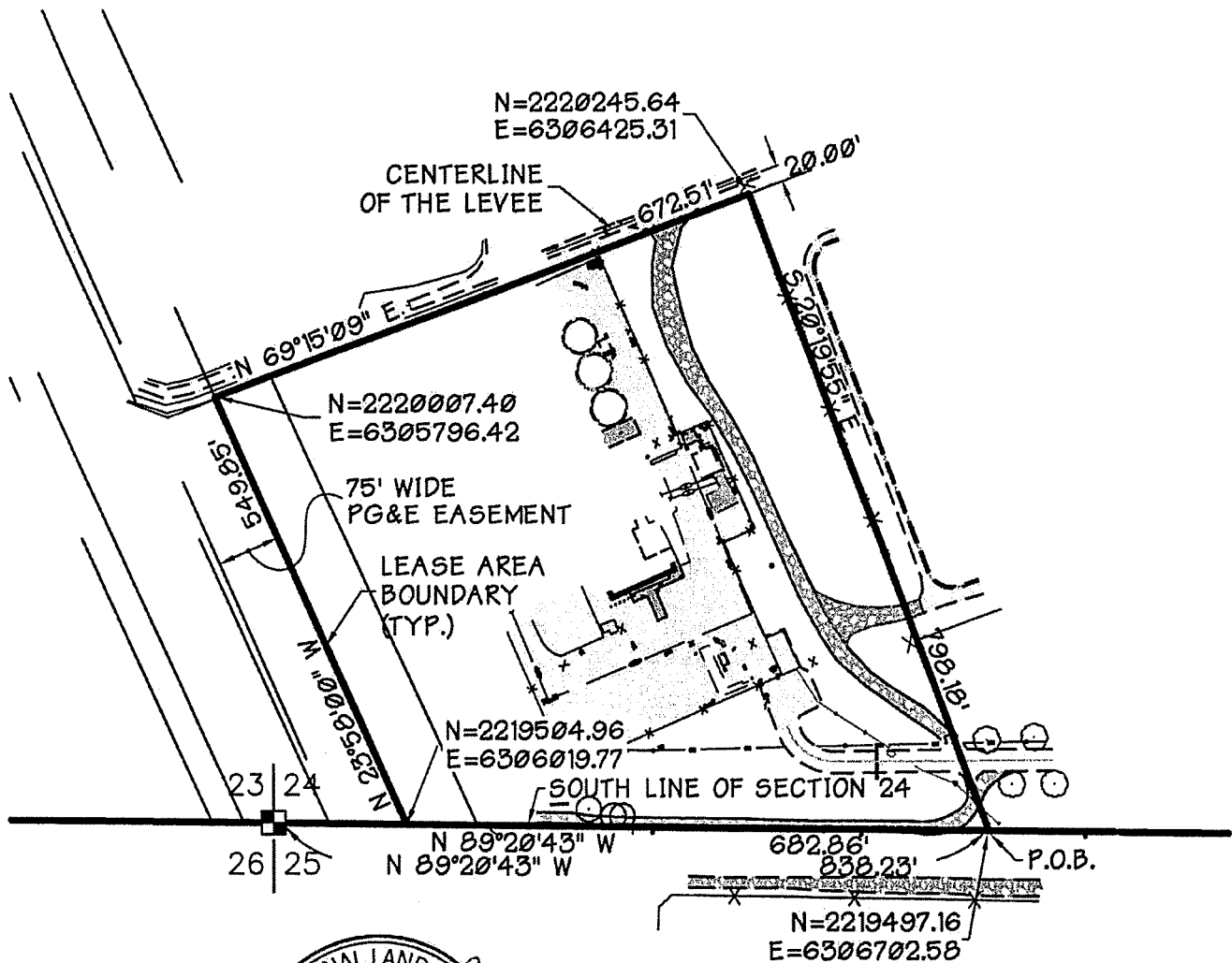


7-31-2009



1"=200'

# Lease Exhibit B



7-31-2009

**CARLTON**  
Engineering Inc.



## EXHIBIT A

### Roadway and Incidental Purpose Easement

All that real property situated in the Southwest one-quarter of Section **24**, Township **3** North, Range **5** East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book **1023** Page **463** Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land **20.00** feet in width, the centerline of which is described as follows:

BEGINNING AT A POINT on the East boundary of a lease parcel to Northern California Power Agency (NCPA) from which the Southwest corner of said Section **24** bears the following two (2) courses: **1)** South **20°19'35"** East **88.05** feet along said East boundary to the South line of said Section **24**, **2)** North **89°20'43"** West **838.23** feet along the South line of said Section **24** to the Southwest corner thereof. Thence from said Point of Beginning North **89°30'37"** East **483.64** feet along the centerline of an existing asphalt road to the beginning of a curve to the left, thence through said curve to the left having a Radius of **273.31** feet, an Arc Length of **526.14**, and being subtended by a Chord bearing North **34°21'38"** East **448.58** feet, thence North **20°47'20"** West **347.74** feet to the beginning of a curve to the right, thence through said curve to the right having a Radius of **84.40** feet, an Arc Length of **74.71** feet, and being subtended by a Chord bearing North **04°34'09"** East **72.29** feet, thence North **29°55'37"** East **44.45** feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of **88.66** feet, an Arc Length of **78.45** feet, and being subtended by a Chord bearing North **04°34'48"** East **75.91** feet, thence North **20°46'02"** West **1048.49** feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of **3013.60** feet, an Arc Length of **99.99** feet, and being subtended by a Chord bearing North **21°43'04"** West **99.99** feet, thence North **22°40'06"** West **499.23** feet to the beginning of a curve to the left, thence through said curve to the left having a Radius of **1670.10** feet, an Arc Length of **109.96** feet, and being subtended by a Chord bearing North **24°33'16"** West **109.94** feet, thence North **26°26'26"** West **44.61** feet to the North line of the Southwest One-Quarter of said Section **24**.

The sidelines of said strip of land shall be lengthened or shortened to terminate at the North line of the Southwest One-Quarter of said Section **24** and the East boundary of said NCPA Lease parcel, respectively.

This legal description is based on record bearings and distances shown on the Record of Survey filed at Book **32** Page **175** with San Joaquin County Recorder's Office.

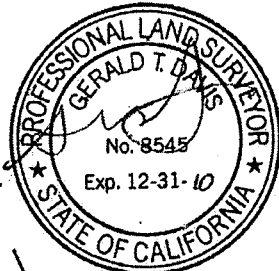
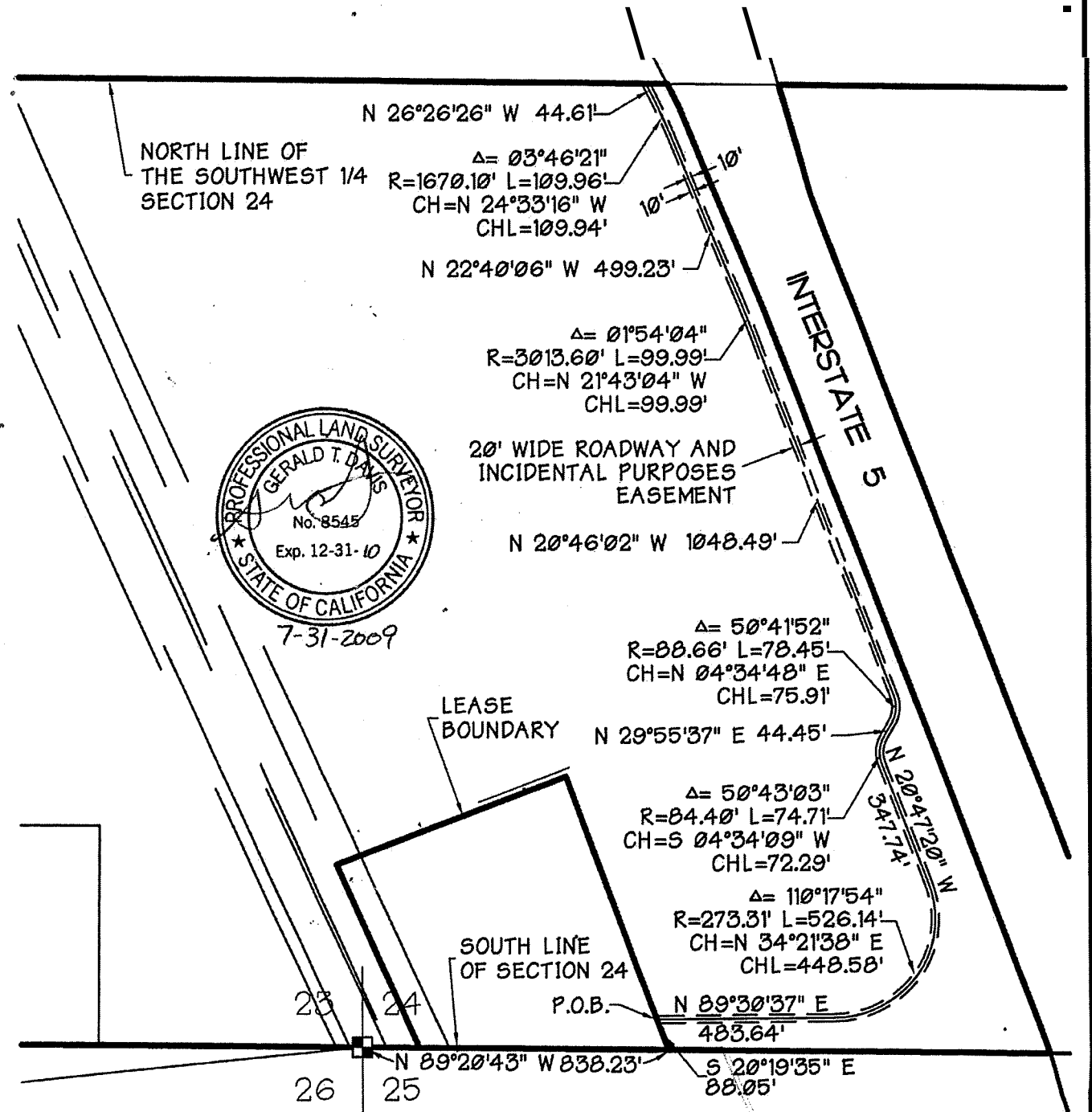
Containing **1.54** Acres (67,148 Sq. Ft.)





1"=400'

# Road Easement Exhibit B



**CARLTON**  
Engineering Inc.





## **EXHIBIT A**

### **Roadway and Incidental Purposes Easement**

All that real property situated in the Southwest one-quarter of Section **24**, Township 3 North, Range **5** East, M.D.M., County of San Joaquin, State of California described as follows:

A portion of that certain parcel described in Book **1023** Page **463** Official Records filed at the Office of the Recorder of San Joaquin County, more particularly a strip of land **26.00** feet in width, the sidelines of which shall be shortened or extended to terminate respectively at the South line of said Section **24** and **20.00** feet measured at a right angle from the centerline of a levee, the West line of which is described as follows:

BEGINNING AT **A** POINT on the South line of said Section **24** from which the Southwest corner of said Section **24** bears North **89°20'43"** West **838.23** feet. Thence from said Point of Beginning North **20°19'35"** West 798.18 feet to a point measuring **20.00** feet, at right angles, to the centerline of the South levee of the White Slough Water Pollution Control Plant Skimming Ponds.

Containing **0.5** Acres (**20,885** Sq. Ft.)

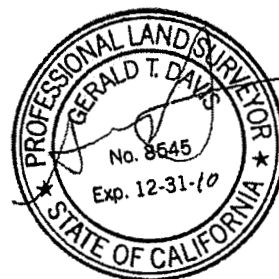
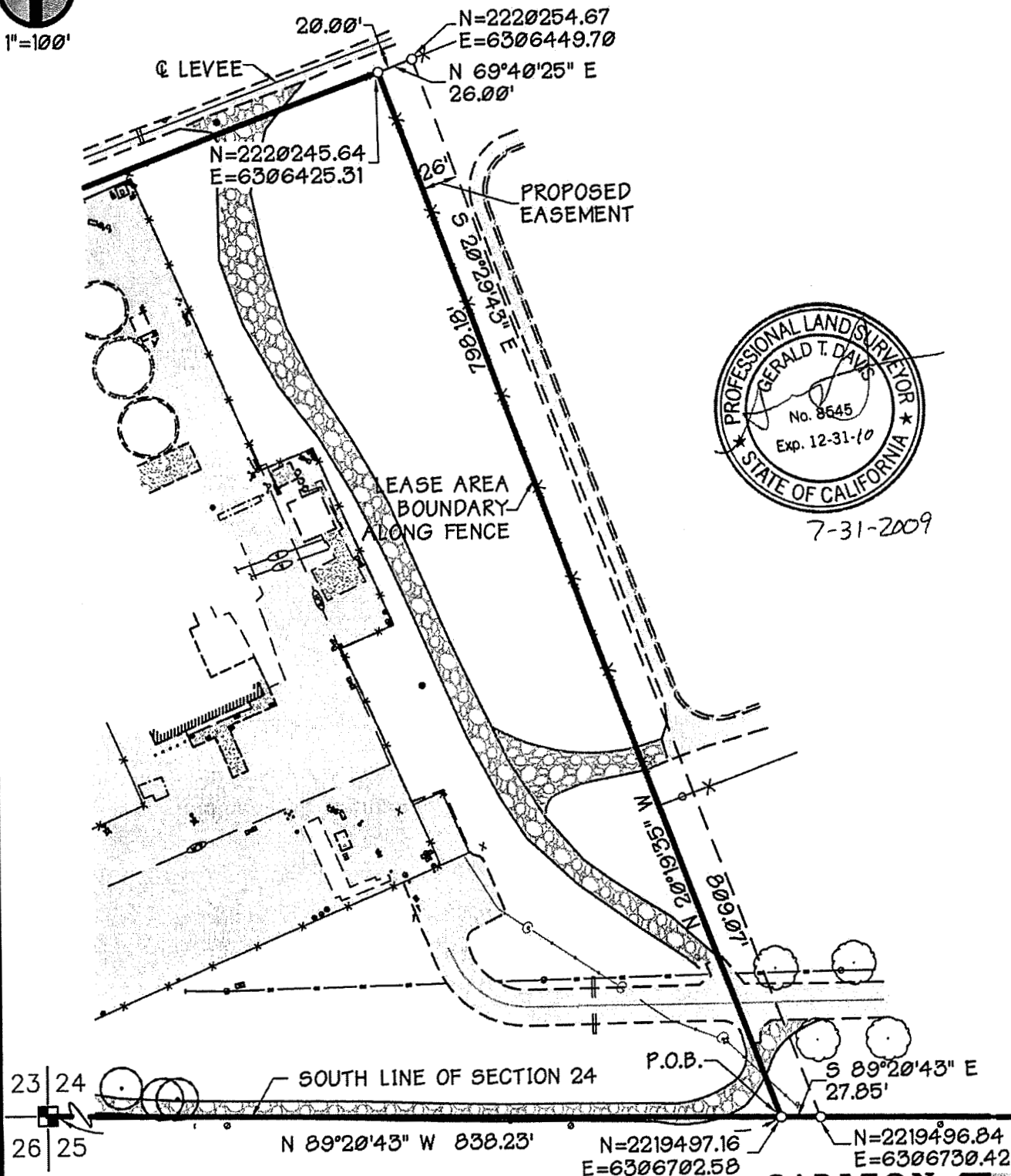
This legal description is based on record bearings and distances shown on the Record of Survey filed at Book **32** Page **175** with San Joaquin County Recorder's Office.



7-31-2009



# Easement Exhibit B

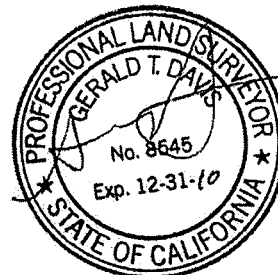
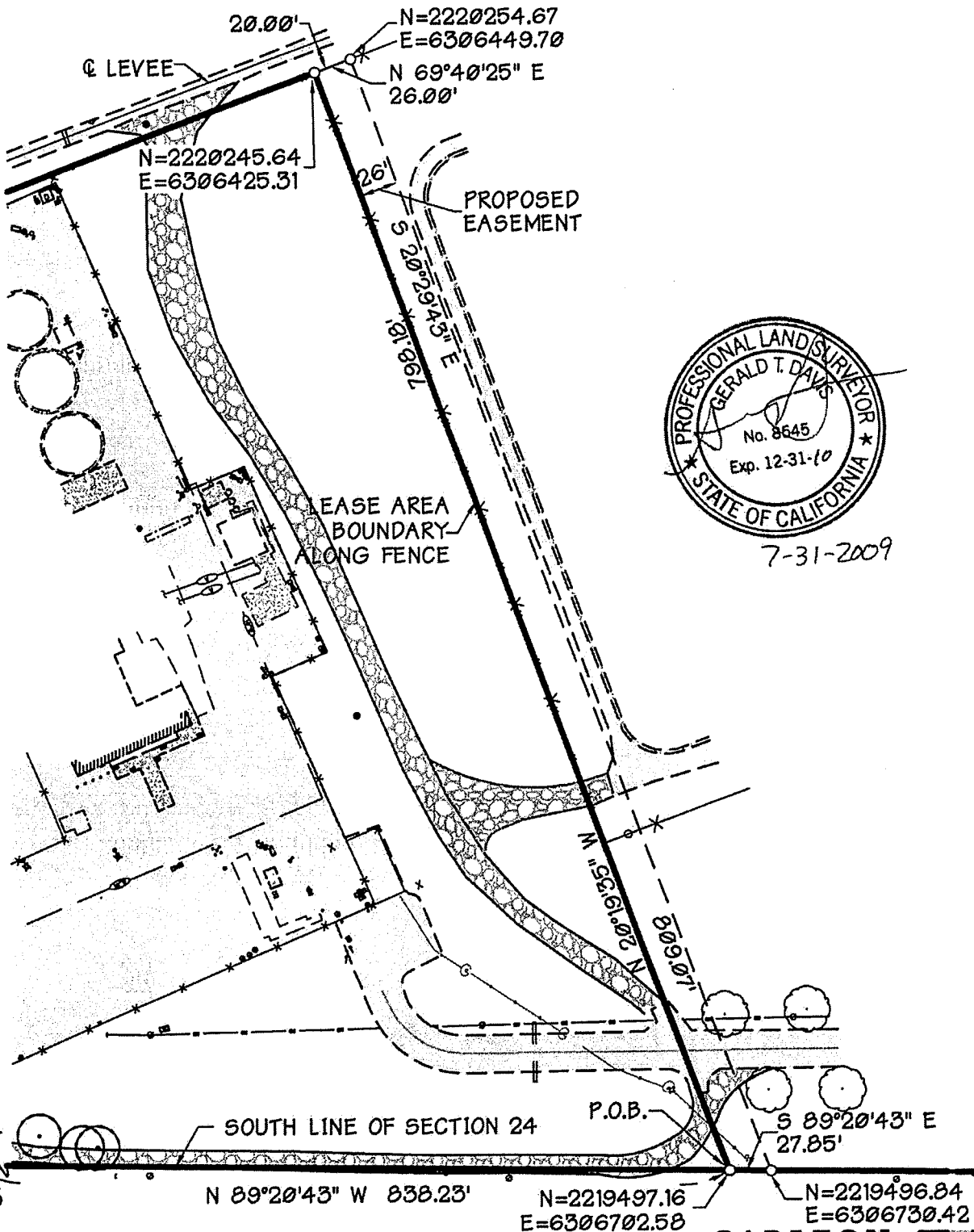


7-31-2009



1"=100'

# Easement Exhibit B



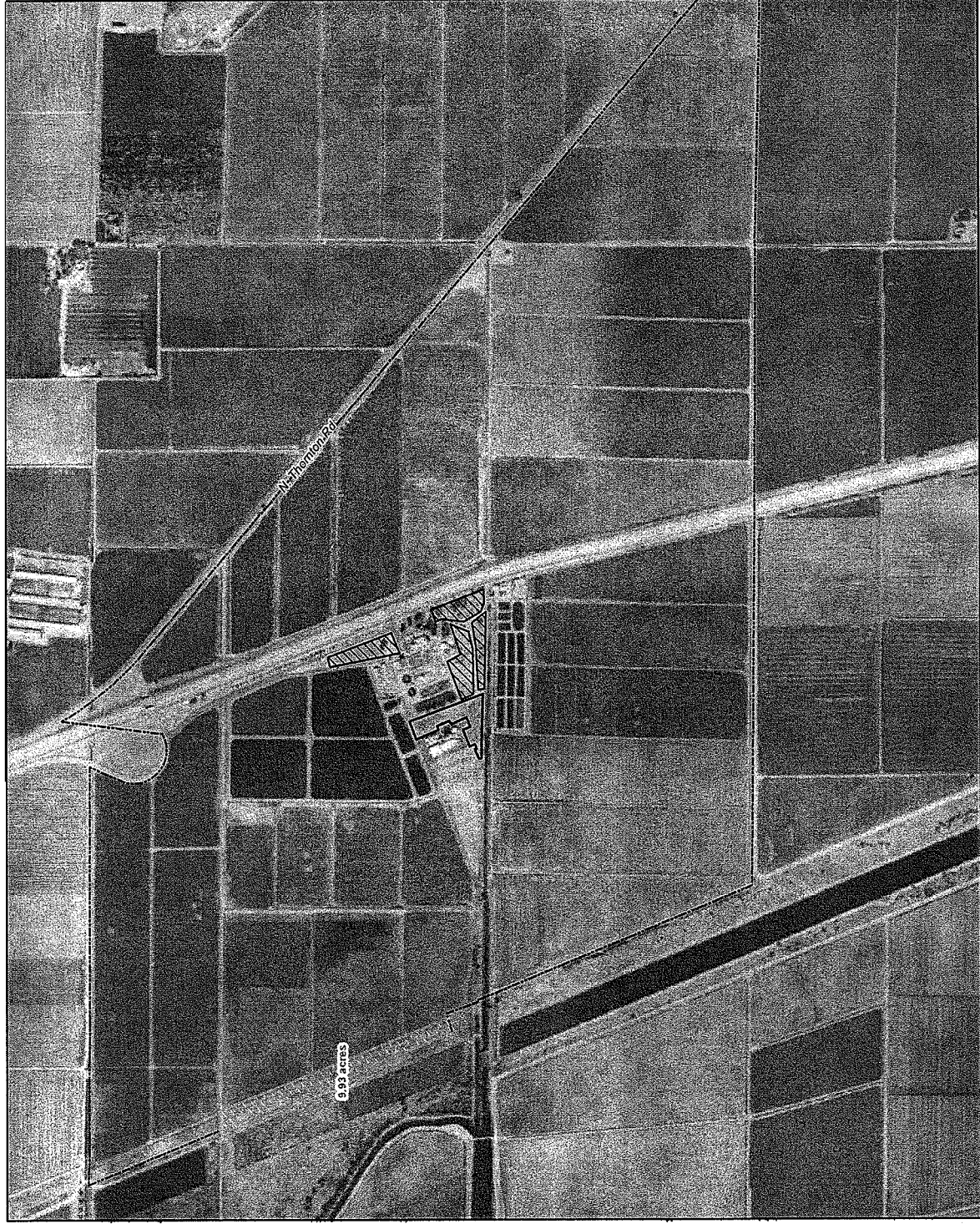
7-31-2009

23 | 24  
26 | 25

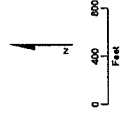


LEGEND

-  PROPOSED LAYDOWN AND/OR PARKING
-  PROPOSED PLANT SITE
-  CITY LIMITS



This map was compiled from various scale source data and maps and is intended for use at only an approximate representation of actual conditions.



### Exhibit E

TASK	SCHEDULE
Scoping Meeting between DTSC and Proponent	Early August 2009
Proponent submits Draft PEA Workplan	August 14, 2009
DTSC Provides Comments on Draft PEA Workplan	September 11, 2009 (within 30-days of receipt of PEA Workplan)
Proponent submits Draft PEA Document	October 30, 2009 (within 51-days of receipt of DTSC's comments)
DTSC Provides Comments or Approval on Draft PEA Document)	November 27, 2009 (within 30-days of receipt of Draft PEA Document)
Proponent submits Draft RAW Document	December 11, 2009 (15 days)
DTSC provides Comments or Approval of the Draft RAW	1/08/2010 (30 days)
Proponent Submits Final Draft RAW (if necessary) to address DTSC's Comments	1/29/2009 (15 days)
DTSC approves Final Draft RAW and initiates 30-day public comment period for Draft RAW and CEQA documentation	Within 45 days of receipt of Final Draft RAW
DTSC responds to public comments (if any) and approves the Final RAW	Within 15 days of close of public comment period
Proponent submits Implementation Report	Within 30 days of completing field work
DTSC reviews/approves Implementation Report	Within 30 days of receiving Implementation Report
Proponent reviews Draft Land Use Covenant and Operation & Maintenance (O&M) Agreement	Within 45 days of receiving Draft Land Use Covenant and O&M Agreement
DTSC certifies Site	Following DTSC approval of the RAW Implementation Report, recording of the Land Use Covenant, signature of the O&M Agreement and preparation of the O&M Plan (as required)

CITY COUNCIL

LARRY D. HANSEN, Mayor  
PHIL KATZAKIAN,  
Mayor Pro Tempore  
SUSAN HITCHCOCK  
BOB JOHNSON  
JOANNE MOUNCE

# CITY OF LODI

## PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET ■ P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
TELEPHONE (209) 333-6706 ■ FAX (209) 333-6710  
EMAIL [pwdept@lodi.gov](mailto:pwdept@lodi.gov)

<http://www.lodi.gov>

BLAIR KING,  
City Manager

RANDI JOHL,  
City Clerk

D. STEPHEN SCHWABAUER,  
City Attorney

F. WALLY SANDELIN,  
Public Works Director

July 24, 2009

Ed Warner  
NCPA Lodi Energy Center  
661 Commerce Drive  
Roseville, CA 95678

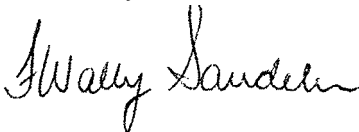
Subject: Agreement to Serve Recycled Water to NCPA

Subject to agreement of business terms, the City of Lodi has agreed to serve recycled water to NCPA's Lodi Energy Center (LEC). NCPA will be submitting a Supplement to the Application for Certification (AFC) with the California Energy Commission (CEC). The City of Lodi can supply the required 1800 acre feet of recycle water per year that is contained in the AFC Supplement.

The City of Lodi currently serves NCPA's STIG facility, the San Joaquin County Mosquito and Vector Control facility, and adjacent City owned agricultural land with recycled water. As discussed in a meeting held between NCPA and the City of Lodi on July 13, 2009, the City of Lodi has sufficient capacity to serve both the LEC plant as well as existing users even with the increased water need resulting from the change in equipment described in the AFC Supplement. This commitment will not adversely affect any existing or future planned recycled water users.

We trust that this addresses the CEC's request. If you need additional information please do not hesitate to contact me at (209) 333-6740.

Sincerely,



for Charles E. Swimley Jr., P.E.  
Water Services Manager

CITY COUNCIL

JOANNE MOUNCE,  
Mayor

LARRY D. HANSEN,  
Mayor Pro Tempore

SUSAN HITCHCOCK

BOB JOHNSON  
PHIL KATZAKIAN

# CITY OF LODI

MUNICIPAL SERVICE CENTER

1331 SOUTH HAM LANE

P.O. BOX 3006

LODI, CALIFORNIA 95241-1910

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FAX (209) 333-6841

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<http://www.lodi.gov>

BLAIR KING,  
City Manager

RANDI JOHL,  
City Clerk

D. STEPHEN SCHWABAUER,  
City Attorney

F. WALLY SANDELIN  
Public Works Director

October 17, 2008

Ed Warner  
NCPA  
661 Commerce Dr  
Roseville, CA 95678

**SUBJECT: Terminal Storm Water Discharge to NCPA's**

The City of Lodi has agreed to provide terminal storm water discharge to NCPA's Lod Energy Center (LEC). NCPA has submitted an Application For Certification (AFC) with the California Energy Commission (CEC). This letter is to provide confirmation of this agreement.

The City of Lodi currently provides storm water service to NCPA's existing STIG facility. The City of Lodi has sufficient storage capacity to serve the proposed LEC. This agreement will not adversely affect any existing or future planned storm drainage requirements.

We trust that this addresses the CEC's request. If you need additional information, please do not hesitate to contact me at (209) 209-333-6740.

Sincerely,



Charles E. Swimley Jr., P.E.  
Water Services Manager

CES/myn

cc: **F. Wally Sandelin, Public Works Director**  
George Morrow, Electric Utility Director  
D. Stephen Schwabauer, City Attorney



